

REMARKS

I. STATUS OF CLAIMS

The Examiner rejected the previously pending claims 1, 3, 5, and 7. No amendments have been made to the claims.

In view of the above, it is respectfully submitted that claims 1, 3, 5, and 7 are currently pending in this application.

II. CLAIMS 1, 3, 5, AND 7 ARE REJECTED UNDER 35 U.S.C. 101.

In item 7 on page 4 of the Office Action, the Examiner asserts "claims 1, 3, 5, and 7 are considered to comprise non-statutory subject matter, for merely manipulating an abstract idea without producing any "useful, concrete, and tangible result."

However, it is respectfully submitted that "outputting a statement with the support fee and the grade of the user ", as specifically recited by the Applicant in, for example, claim 1, indicates that Applicant's invention produces a "useful, concrete, and tangible result". Further understanding and appreciation of Applicant's claimed invention as specifically recited in, for example, claim 1, would be found in, for example, page 6, lines 13-19; page 11, line 19 through page 12, line 7; and page 14, line 20 through page 15, line 4 of the Specification.

Moreover, it was held in State Street that a claim was statutory if a claim recites "a practical application" that produces a "concrete, tangible and useful result". Claim 1 recites the practical application of "*a support fee setting method*" that produces "*a statement with the support fee and the grade of the user.*" Therefore, it is respectfully submitted that claim 1, adheres to the holding in State Street.

Therefore, it is respectfully requested that the rejection be withdrawn.

Although the above comments are specifically directed to claim 1, it is respectfully submitted that the comments would be helpful in understanding how claims 3, 5 and 7 also overcome the 35 U.S.C. § 101 rejections.

III. **CLAIMS 1, 3, 5 AND 7 ARE REJECTED UNDER 35 U.S.C. 103(a) AS BEING UNPATENTABLE OVER BOARDMAN ET AL. (US 6,456,986).**

The Examiner asserts Boardman et al. (Boardman) discloses a support fee setting method having most of the features as recited, for example, in claim 1. However, for example, claim 1 specifically recites, amongst other novel features, (1) *receiving an inquiry from a user with a computer support activity by a support person*, (2) *retrieving a first data corresponding to one point derived from one of the jobs*, (3) *retrieving a second data corresponding to the grade of the user*, (4) *retrieving a third data corresponding to an actual cost for responding to the computer support activity*, (5) *retrieving a fourth data corresponding to an amount according to the grade of the user*, and (6) *computing a support fee based on the first data, the second data, the third data and the fourth data as a total amount and a total of the actual cost for responding to the computer support activity*. Boardman fails to disclose, teach or suggest these features.

In contrast, Boardman discloses a plan selection rule used to select price plans based on whether a telephone call is a fixed wire or cellular call, and depending on the time the call is made. (see column 2, lines 42 – 65 of Boardman).

On page 4 of the Office Action, the Examiner concedes that Boardman fails to disclose "a point system with a point-to-grade conversion table, nor including the actual cost for responding to an inquiry from a user in the determination of the support fee." (see pages 4 –5 of the Office Action).

However, in the outstanding Office Action, the Examiner takes Official Notice that "a point system with a point-to-grade conversion table, and basing a fee on an actual cost, are two well known, hence obvious, elements to include in any method of setting a fee/pricing structure, and official notice to that effect is hereby taken." (see page 5 of the Office Action). However, the amended claims as filed on April 26, 2006 do not recite a "point-to-grade conversion table." Therefore, it is respectfully submitted, the rejection is improper.

Moreover, in Applicant's previous response mailed on December 5, 2005 Applicant respectfully requested that the Examiner produce authority supporting the basis for taking the Official Notice. However, it is respectfully noted that the Examiner has failed to produce any authority for such basis.

MPEP 2144.03(A) states: "**Official notice unsupported by documentary evidence** should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art **are capable of instant and unquestionable demonstration as**

being well-known". (Emphasis Added). MPEP 2144.03(A) further states: "As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be **"capable of such instant and unquestionable demonstration as to defy dispute."**" (Emphasis Added).

It is respectfully submitted that the features alleged by the Examiner to be well-known are not capable of instant and unquestionable demonstration. More specifically, Applicant's specifically recited features of "(1) accessing the job-to-point conversion table where jobs are converted to points such that a job responding to the content of the inquiry requiring higher technique is set with a higher point; (2) retrieving a first data corresponding to one point derived from one of the jobs among the points from the job-to-point conversion table; and (3) accessing the point conversion table where an amount is set for each grade such that the point derived is converted to a lower amount as the grade becomes higher," as recited, for example, in claim 1, is not capable of instant and unquestionable demonstration.

Therefore, it is respectfully submitted that the Official Notice is improper, and it is respectfully requested that the Examiner withdraw this Official Notice.

Further, in this present response, the Applicants respectfully traverse the Examiner's statements of Official Notice and requests the Examiner produce authority for the statements related to that which the Examiner takes Official Notice of. Applicants specifically point out the following errors in the Examiner's action.

First, the Examiner uses common knowledge as the principal evidence for the rejection. As explained in M.P.E.P. § 2144.03(E):

any facts so noticed should . . . serve only to 'fill in the gaps' in an insubstantial manner which might exist in the evidentiary showing made by the Examiner to support a particular ground of rejection. It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection was based.

Second, the noticed fact is not considered to be common knowledge or well-known in the art. In this case, the limitation is not of notorious character or capable of instant and unquestionable demonstration as being well-known. Instead, this limitation is unique to the present invention. See M.P.E.P. § 2144.03(A) ("the notice of facts beyond the record which may be taken by the Examiner must be "capable of such instant and unquestionable demonstration as to defy dispute").

Third, there is no evidence supporting the Examiner's assertion. See M.P.E.P. § 2144.03(B) ("there must be some form of evidence in the record to support an assertion of common knowledge").

Fourth, it appears that the Examiner also bases the rejection, at least in part, on personal knowledge. The Examiner is required under 37 C.F.R. § 1.104(d)(2) to support such an assertion with an affidavit when called for by the Applicant. Thus, Applicant calls upon the Examiner to support such assertion with an affidavit.

Further, it is respectfully submitted that the rejection is improper because the Office Action fails to articulate a proper motivation to modify. On page 5 of the current Office Action, the Examiner asserts that it would have been obvious to modify "the method of Boardman et al. so as to use a point system with a point-to-grade conversion table, and to include the actual cost for responding to an inquiry from a user in the determination of the support fee." However, Boardman fails to suggest or disclose support fees at all. Instead, Boardman is concerned with fees for using a telephone network. Furthermore, it is respectfully submitted that since the Examiner fails to provide a source for this motivation, it appears the Examiner employs improper hindsight by looking to the Applicant's specification for a reason to modify.

In view of the above, it is respectfully submitted that the rejection is overcome.

Although the above comments are specifically directed to claim 1, it is respectfully submitted that the comments would be helpful in understanding differences in claims 3, 5, and 7 over Boardman.

IV. CONCLUSION

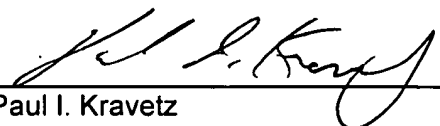
If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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